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## Doing Time for Perjury in a Civil Case

On the back of this page is an account of the trial and appeal of Ku Klux Klan leader David Wayne Holland who was convicted of violating 18 U.S.C. §1621, the federal perjury statute. Holland's perjury was committed in a civil case.

When Holland was sentenced, the district court departed from the sentencing guidelines and gave Holland a lighter sentence than the guidelines called for. The judge's rationale was that the guidelines were applicable to the sentencing of those who perjured themselves in *criminal* cases, but not *civil* cases. That rationale was rejected outright by the United States Court of Appeals for the 11<sup>th</sup> Circuit. An excerpt from the appellate court's opinion is printed here:

"Neither Holland's conduct nor the circumstances surrounding his offense were atypical or significantly different from the conduct to which the perjury statute normally applies. The mere fact that the vast majority of convictions under 18 U.S.C. §1621 may involve perjury in a criminal proceeding does not affect our ruling. Holland engaged in the exact type of conduct that would form the basis for a perjury conviction in a criminal proceeding; he wilfully made material statements under oath that he knew were false. Moreover, the fact that the perjury statute itself applies without distinction both to perjury committed in a civil proceeding and to perjury in a criminal prosecution reinforces our view that the circumstances of Holland's perjury do not merit a downward departure [from the sentencing guidelines].

"In so holding, we categorically reject any suggestion, implicit or otherwise, that perjury is somehow less serious when made in a civil proceeding. Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the functioning and integrity of the legal system as well as to private individuals. In the instant case, Holland's perjury inexcusably wasted valuable and scarce public resources. His actions needlessly consumed court time, forced the Federal Bureau of Investigation and the United States Attorney's Office to engage in prolonged investigations, and attempted to prevent private citizens . . . from satisfying their judgment." *United States v. Holland*, 22 F.3d 1040, 1047-48 (11<sup>th</sup> Cir. 1994) (emphasis added).

It is important to note that *no party* and *no judge* in David Wayne Holland's case ever supposed that lying under oath in a civil case did not constitute the crime of perjury. The trial judge did believe (wrongly as it turned out) that perjury in a civil case merited a lighter punishment than perjury in a criminal case, but she did not suppose that such perjury was not a crime.

## The Holland Case

David Wayne Holland and the Southern White Knights of the Ku Klux Klan were sued for conspiring to deny the civil rights of certain persons who marched in Georgia in 1987 to honor the memory of Martin Luther King, Jr. In furtherance of their conspiracy, Holland and his associates aided and abetted various acts of harassment including the throwing of rocks and bottles at the marchers. Holland was held liable and ordered to pay \$450,000.

Holland appealed the judgment, and in making his appeal he moved to proceed *in forma pauperis* (so that he would not have to pay certain fees and costs). Accompanying his motion was an affidavit in which Holland swore that he did not own any stocks, bonds, or other items of value. Later, Holland gave a deposition in which he made similar claims about his penury.

When it appeared that Holland had lied about his assets, the attorney for the plaintiffs took Holland's sworn affidavit and deposition to the U.S. attorney and asked that Holland be prosecuted for perjury. The plaintiff's attorney was Morris Dees, a renowned civil rights lawyer.

A federal grand jury indicted Holland on five counts of perjury (alleging that he had lied about his income and assets) and one count of obstruction of justice (tampering with a witness). One charge was dismissed before trial and one charge was dropped after the government had presented its case. However, a jury found Holland guilty of three of the remaining four counts of perjury. Holland had lied so as to hide his assets from the original plaintiffs who were trying to satisfy the money judgment that they had obtained against him.

The United States Sentencing Guidelines (USSG) provide that a conviction for (one count of) perjury requires a "base offense level" of 12. USSG §2J1.3(a). That base offense level is then coupled with the defendant's criminal history (Holland had been in trouble with the law before and qualified for criminal history category III) to yield the sentencing guideline. In Holland's case, the Sentencing Guidelines called for a sentence of 15 to 21 months for each conviction. See, table at USSG Ch. 5, pt. A. However, the trial judge departed downward from the Sentencing Guidelines because she believed that the "base offense level" of 12 was applicable only for perjury committed in a criminal proceeding. She gave Holland 8 points rather than 12 (which brought the sentence down to 6 to 12 months).

The court of appeals reversed and made the statement quoted on the front of this paper.

As noted above, *Holland* is *not* about whether perjury in a civil case is a crime; everyone agreed that it was. *Holland* was about whether perjury in a civil case is *as serious* a crime as perjury in a criminal case. The court of appeals held that it was, "categorically reject[ing] any suggestion . . . that perjury is somehow less serious when made in a civil proceeding."

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[Note: The base level offense for perjury is increased by 3 levels if the offense "resulted in substantial interference with the administration of justice." USSG §2J1.3(b)(2). Also, USSG §2J1.3(c) requires that some perjuries involving *criminal offenses* be considered under USSG §2X3.1 ("Accessory After the Fact") rather than the ordinary perjury section. The court of appeals cited subsection 2J1.3(c) to buttress its position that, in the ordinary case (like Holland's), no distinction is to be made between civil and criminal cases. 22 F.3d 1048 n. 11.]